

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.,
AMERICAN HOME ASSURANCE
COMPANY, THE INSURANCE COMPANY
OF THE STATE OF PENNSYLVANIA,

Petitioners,

v.

BMC STOCK HOLDINGS, INC.,

Respondent.

Case No. 1:18-cv-05777-JPO

JOINT STIPULATION REGARDING STAY PENDING APPEAL

Petitioners National Union Fire Insurance Company of Pittsburgh, PA, American Home Assurance Company, and The Insurance Company of the State of Pennsylvania (together, “Petitioners”) and Respondent BMC Stock Holdings, Inc. (“Respondent”) (Petitioners and Respondent, collectively, the “Parties”), by and through their respective counsel of record hereby enter into the following stipulation regarding Respondents’ motion to stay pending appeal (ECF No. 31).

WHEREAS, Respondent filed its complaint in the United States District Court for the Central District of California (the “California Court”) on May 29, 2018, in an action captioned *BMC Stock Holdings, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA, et al.*, No. 2:18-cv-04726-JAK-RAO (C.D. Cal.) (the “California Action”);

WHEREAS, Petitioners filed in this Court a petition to compel arbitration of Respondent’s claims in the California Action on June 26, 2018 (the “New York Action”);

WHEREAS, the Court granted Petitioners’ petition to compel on December 3, 2018;

WHEREAS, Respondent filed a notice of appeal of the December 3, 2018 Order on December 28, 2019, and a motion to stay the December 3, 2018 Order pending appeal on January 7, 2019;

WHEREAS, the California Court entered an Order on December 19, 2019, directing the Parties to show cause in writing why the Court should not stay this matter pending arbitration;

WHEREAS, the Parties have now agreed that, pending decision on Respondent's appeal of the Court's December 3, 2018 Order, it is in their best interests to (i) voluntarily stay any arbitration of their disputes, and (ii) proceed in the California Action for the limited purpose of conducting certain discovery concerning purported additional insured documentation that the Parties believe will greatly increase the likelihood of settlement of the dispute between them;

WHEREAS, the Parties anticipate undertaking an early mediation pursuant to the Central District of California's mandatory ADR program following said discovery;

WHEREAS, the Parties agree that neither the California Action remaining open nor any limited proceedings therein will be construed or argued by Respondent as a waiver or admission against interest by Petitioners of their position that the Parties' dispute is subject to arbitration;

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE that

- A. The Parties shall voluntarily stay the initiation of arbitration under the Court's December 3, 2018 Order pending decision on Respondent's appeal; and
- B. Subject to the California Court's approval, the Parties shall proceed in the California Action for the limited purposes of (i) conducting certain discovery concerning purported additional insured documentation that the Parties believe will greatly increase the likelihood of settlement of the dispute between them, and (ii) undertaking

an early mediation pursuant to the Central District of California's mandatory ADR program following said discovery; and

C. Respondent withdraws without prejudice its January 7, 2019 motion to stay pending appeal (ECF No. 31).

IT IS SO STIPULATED.

Dated: January 23, 2019

ANDERSON KILL P.C.

By: /s/ Ethan W. Middlebrooks

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Dated: January 23, 2019

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